



House of Representatives

File No. 661

General Assembly

January Session, 2007

(Reprint of File No. 328)

Substitute House Bill No. 6980
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 30, 2007

AN ACT CONCERNING HEATING OIL AND PROPANE GAS CHARGES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16a-21 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) No person, firm or corporation shall sell at retail fuel oil or
4 propane gas to be used for residential heating without a written
5 contract that contains all the terms and conditions for delivery of such
6 retail fuel oil or propane gas and the amount of fees, charges or
7 penalties, including tank removal and inspection fees, minimum usage
8 fees, liquidated damages and hazardous materials fees assessed to the
9 consumer under such contract and without placing the unit price,
10 clearly indicated as such, the total number of units sold and the
11 amount of any delivery surcharge in a conspicuous place on the
12 delivery ticket given to the purchaser or an agent of the purchaser at
13 the time of delivery. No person, firm or corporation may bill or
14 otherwise attempt to collect from any purchaser of retail fuel oil or
15 propane gas an amount which exceeds the unit price multiplied by the

16 total number of units stated on the delivery ticket, plus the amount of
17 any delivery surcharge stated on the ticket. For the purpose of this
18 section, unit price means the price per gallon computed to the nearest
19 tenth of a whole cent. Any written contract required by this section
20 shall be in plain language pursuant to section 42-152 and any fee,
21 charge or penalty disclosed in such contract shall be in twelve-point,
22 boldface type of uniform font. The requirement that contracts be in
23 writing as set forth in this section may be satisfied pursuant to the
24 provisions of (1) The Connecticut Uniform Electronic Transactions Act,
25 sections 1-266 to 1-286, inclusive, (2) sections 42a-7-101 to 42a-7-106,
26 inclusive, and (3) the Electronic Signatures in Global and National
27 Commerce Act, 15 USC 7001 et seq. Except as provided in subsection
28 (e) of this section, verbal telephonic communications shall not satisfy
29 the writing requirement of this section. The requirement that contracts
30 be in writing as set forth in this section shall not apply to any retail fuel
31 oil or propane gas contract where no fee, charge or penalty is assessed,
32 except for the unit price of the retail fuel oil or propane gas delivered
33 to a consumer and any surcharge authorized under section 16a-22b, as
34 amended by this act. No contract for the delivery of retail fuel oil or
35 propane gas under this section shall include a provision for liquidated
36 damages for a consumer breach of such contract where the liquidated
37 damages exceeds the actual damages to the retail fuel oil or propane
38 gas retailer caused by such breach.

39 (b) Any person, firm or corporation who violates subsection (a) of
40 this section shall be fined not more than one hundred dollars for the
41 first offense nor more than five hundred dollars for each subsequent
42 offense.

43 (c) The provisions of this section shall not apply to existing
44 customers of a person, firm or corporation selling retail fuel oil or
45 propane gas on October 1, 2007, who have valid written contracts on
46 said date.

47 (d) The provisions of this section shall not apply to existing
48 customers of a person, firm or corporation selling retail fuel oil or

49 propane gas on October 1, 2007, who do not have valid written
50 contracts on said date if such existing customers receive a written
51 contract prior to October 1, 2007, containing all the terms and
52 conditions for delivery of such retail fuel oil or propane gas and the
53 amount of fees, charges or penalties, including tank removal and
54 inspection fees, minimum usage fees, liquidated damages and
55 hazardous materials fees assessed to the consumer under such
56 contract, provided: (1) The fees in such contract shall not be greater
57 than the fees charged to such existing customer on October 1, 2007; (2)
58 the existing customer may reject such contract by notifying the fuel oil
59 or propane gas company within sixty days of receipt of such written
60 contract without any penalty, including, but not limited to, a tank
61 removal fee; and (3) such written contract shall be effective if the
62 existing customer does not reject such contract within sixty days of
63 receipt of such contract.

64 (e) The requirement that contracts be in writing pursuant to this
65 section and section 16a-23n may be satisfied telephonically by a
66 person, firm or corporation selling at retail fuel oil or propane gas, only
67 if: (1) Such telephonic communications are preceded by the consumer
68 having received all terms and conditions of the contract in writing,
69 except for the contract duration, the unit price and the maximum
70 number of units covered by the contract, if any, in advance of such
71 telephonic communications between said consumer and the person,
72 firm or corporation selling at retail fuel oil or propane gas, (2) the
73 person, firm or corporation selling at retail fuel oil or propane gas
74 employs an interactive voice response system or similar technology
75 which provides the consumer with the contract duration, the unit price
76 and the maximum number of units covered by the contract, if any, to
77 complete the contract, (3) the person, firm or corporation selling at
78 retail fuel oil or propane gas retains, in a readily retrievable format, a
79 recording of the consumer agreeing to each such term and condition
80 for the period of the contract plus one year, (4) the person, firm or
81 corporation selling at retail fuel oil or propane gas sends said
82 consumer a letter confirming the agreement to such terms and

83 conditions with the written stipulation that the consumer is bound by
84 such terms and conditions unless the agreement is rescinded by said
85 consumer, in writing, within three business days of receipt of said
86 letter by said consumer, and (5) the person, firm or corporation selling
87 at retail fuel oil or propane gas retains a copy of each such letter.

88 (f) A violation of the provisions of this section constitutes an unfair
89 trade practice under subsection (a) of section 42-110b.

90 Sec. 2. Section 16a-22b of the general statutes is repealed and the
91 following is substituted in lieu thereof (*Effective July 1, 2007*):

92 (a) No retail dealer of fuel oil or propane shall assess a surcharge on
93 the price of fuel oil or propane delivered to a customer if the delivery
94 of the fuel oil or propane is in an amount in excess of one hundred
95 twenty-five gallons, except that a surcharge may be assessed if a
96 delivery is made outside the normal service area or the normal
97 business hours of the dealer or extraordinary labor costs are involved
98 in making a delivery. Any other fee, charge or penalty shall be
99 assessed in accordance with the provisions of section 16a-21, as
100 amended by this act.

101 (b) No retail dealer of fuel oil or propane shall assess a residential
102 customer a minimum delivery surcharge on any delivery initiated by
103 the seller, including any delivery under an automatic delivery
104 agreement.

105 (c) A violation of the provisions of this section constitutes an unfair
106 trade practice under subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	16a-21
Sec. 2	<i>July 1, 2007</i>	16a-22b

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Consumer Protection, Dept.; Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill could yield minimal revenue generated from violations of the Connecticut Unfair Trade Practices Act (CUTPA). In FY 06, CUTPA revenues were \$384,209 for violations of all types. Any revenue gain from criminal fines imposed under the bill would also be minimal

House "A" changed the effective date from July 1, 2007 to October 1, 2007, which results in less potential revenue from CUTPA fines and criminal fines.

The Out Years

The annualized ongoing fiscal impact identified above would remain relatively constant into the future, since the amount of CUTPA revenue and criminal fines is set by statute.

OLR Bill Analysis**sHB 6980 (File 328, as amended by House "A")******AN ACT CONCERNING HEATING OIL AND PROPANE GAS CHARGES.*****SUMMARY:**

This bill requires contracts between heating oil and propane gas dealers and their residential customers to be written. It requires the contracts to include all terms, conditions, and charges and to be in plain language. It exempts contracts (1) with existing customers if certain conditions are met, (2) finalized by telephone if certain steps are followed, and (3) that comply with federal and state e-sign law. It subjects a dealer who violates its written contract requirement to a criminal penalty of up to \$100 for a first offense and up to \$500 for subsequent offenses.

The law does not allow dealers to impose surcharges on deliveries of home heating oil or propane greater than 125 gallons, unless (1) the delivery is outside of the dealer's normal service area or its normal business hours or (2) extraordinary labor costs are involved. The bill requires any other fee, charge, or penalty to be assessed in accordance with its provisions.

It also makes a violation of its provisions and the law allowing only certain types of surcharges an unfair trade practice.

*House Amendment "A" delays the effective date of the written contract provisions from July 1, 2007 to October 1, 2007.

EFFECTIVE DATE: October 1, 2007, except for the provision on surcharges, which is effective on July 1, 2007.

WRITTEN CONTRACTS

The law requires home heating oil and propane gas dealers to disclose all of a residential customer's costs in writing, including unit price and delivery surcharges (CGS § 14-329). The bill requires the contracts between these dealers and their customers to be written and contain all of the delivery terms and conditions and the amount of fees, charges, or penalties, including tank removal and inspection fees, minimum usage fees, liquidated damages, and hazardous material fees assessed on the consumer. Further, the bill requires the contracts to meet the requirements of the state plain language law and to state fees, charges, and penalties in 12-point boldface type of uniform font (see BACKGROUND). The bill prohibits them from including a provision for liquidated damages for a consumer breach of contract in which the liquidated damages are greater than the actual damages to the dealer. The law already requires contracts offering a guaranteed price plan to be written (CGS § 16a-23n).

Existing Customers

The bill exempts from its written contract requirements an existing customer with a valid written contract on July 1, 2007. It also exempts an existing customer without a valid written contract in effect on July 1, 2007 if:

1. the customer receives such a contract before that date;
2. the contract contains all of the delivery terms and conditions and the amount of fees, charges, or penalties the bill requires for new customer contracts;
3. the fees in the contract are not more than the fees charged the customer before July 1, 2007;
4. the customer is allowed to reject it by notifying the dealer within 60 days of receiving it without penalty, including a tank removal fee; and
5. the contract is effective if the customer does not reject it within

the 60-day period.

Telephonic Contracts

The bill generally provides that verbal telephonic communications do not satisfy the bill's written contract requirements. But it specifically allows the written contract requirement to be satisfied telephonically if:

1. the telephone call is preceded by the customer's receipt of all contract terms and conditions in writing, except for contract duration, unit price, and maximum units covered, if any;
2. the dealer uses an interactive voice response system or similar technology that provides the consumer with the contract duration, unit price, and maximum units, if any, to complete the contract;
3. the dealer keeps, in a readily retrievable format, a recording of the consumer agreeing to each term and condition for the duration of the contract plus one year;
4. the dealer sends a letter to the customer confirming the agreement to each term and condition with the written stipulation that the customer is bound by them unless the customer rescinds it in writing within three days of receiving the letter; and
5. the dealer keeps a copy of the letter.

Finally, it also exempts contracts in which a fee, charge, or penalty is not assessed except for (1) the fuel's unit price and (2) surcharges imposed for (a) delivering 125 gallons of fuel or less or (b) deliveries outside of the normal service area or normal business hours or if extraordinary labor costs are incurred.

Electronic Contracts

It allows dealers to meet the written contract requirement by

meeting the requirements of the Connecticut Uniform Electronic Transaction Act, the federal Electronic Signatures in Global and National Commerce Act, and provisions about electronic contracts in the Uniform Commercial Code (see BACKGROUND).

BACKGROUND

Plain Language in Consumer Contracts

The law requires all consumer contracts, defined as those having a value of \$25,000 or less or to lease a residence, to be written in plain language and establishes two alternative tests for determining if the requirement has been satisfied. The subjective test requires the contracts to meet nine standards, such as using short sentences and paragraphs, everyday words, and readable type. The objective test has 11 standards, such as limiting the number of words per sentence to 50 and words per paragraph to 150, limiting the average number of syllables per word to less than 1.55, and prohibiting type face smaller than eight points (CGS § 42-152).

E-Sign Laws

The Connecticut Uniform Electronic Transactions Act establishes a legal foundation to use electronic communications in transactions in which the parties have agreed to conduct business electronically. The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) validates the use of electronic records and signatures (15 U. S. C. § 7001 et seq.). The Uniform Commercial Code provisions modify the federal law in certain ways to the extent federal law allows (CGS § 42a-7-101 et seq.).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and

accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/14/2007)

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (04/23/2007)